

JUN 30 2009

Federal Communications Commission  
Office of the Secretary

ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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JUN 23 2009

Federal Communications Commission  
Bureau / Office

In the Matter of )

PENDLETON C. WAUGH,  
CHARLES M. AUSTIN, and  
JAY R. BISHOP

PREFERRED COMMUNICATION SYSTEMS, INC. )

Licensee of Various Site-by-Site Licenses  
in the Specialized Mobile Radio Service

PREFERRED ACQUISITIONS, INC. )

Licensee of Various Economic Area Licenses in the  
800 MHz Specialized Mobile Radio Service

EB Docket No. 07-147

File No. EB -06-IH-2112

NAL/Acct. No. 200732080025

FRN No. 0003769049

FRN No. 0003786183

To: The Honorable Richard L. Sippel

**MOTION TO INTERVENE**

Comes now the Preferred Investors Association ("PIA") and by its attorneys as provided for in §1.223(c) of the Commission's Rules seeks leave of the Presiding Judge to intervene in this proceeding.

In support thereof the following is shown:

**INTERESTS**

1. PIA is an unincorporated association formed in November 2008 by investors in Preferred Communications Systems, Inc. and Preferred Acquisitions, Inc. (collectively "PCSI"),

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parties in this proceeding. It currently has approximately 70 members whose investments in PCSI total nearly 3 million dollars. This amount represents over one-third of the total investment of less than 8 million dollars by investors not including the Patel investments. PIA's members hold preferred stock and/or notes issued by PCSI to cover monies loaned the corporation. PCSI is in default on all of these notes. No explanation has been provided the investors concerning PCSI's default and plans, if any, to cure the default.

2. PIA was formed to investigate and address growing concerns about the corporate status of PCSI, its compliance with corporate governance requirements, and the lack of information available to shareholders and investors. Mr. Charles M. Austin ("Austin") in particular has not adequately kept PCSI stakeholders fully informed of the significance of this FCC proceeding including the terms of the proposed settlement. Based upon available information, the settlement being proposed would not be in the interest of PIA or the broader public interest.

3. The interests of PIA members and the interests of the corporation are not being adequately represented before the FCC. Austin is an individual party in the proceeding and has been representing PCSI as its sole officer.<sup>1</sup> Mr. Austin is neither experienced nor qualified in these matters. PCSI requires independent counsel to avoid conflicts and to provide competent representation. This conflict created by the roles of Mr. Austin in his individual capacity and as the sole officer of PCSI means that Mr. Austin cannot properly represent the interests of PCSI including the PIA members in these negotiations. This conflict is evident where Mr. Austin's personal interests are at stake including negotiations that might dilute or compromise the

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<sup>1</sup> Section 1.21 requires leave of the Presiding Judge for an officer to represent a corporation in hearings before the Federal Communications Commission. It does not appear that such leave has been requested or granted.

financial interest of PIA members to the advantage of Austin. Any monetary forfeiture, for example, should be assessed against the named individuals, including Austin, not PCSI.

4. Accordingly PIA seeks leave of the Presiding Judge to intervene in the negotiation stage of this proceeding.

**PIA PARTICIPATION WILL FACILITATE  
COMPREHENSIVE SETTLEMENT**

5. PIA participation will assist in the development of a settlement which protects the public interest and which is supportable by the various PCSI stakeholders. While saving the costs of a protracted hearing is a desirable goal, the settlement must ultimately serve the public interest. Thus, if private claims are to be compromised as part of a comprehensive settlement, PIA members must be permitted to have a say in such negotiations.

6. As the Order to Show Cause, FCC 07-125, released July 20, 2007 (“Designation Order”) recognized, the “ownership” of PCSI has been inconsistently represented in various submissions to the FCC. In particular, the interest of Pendleton C. Waugh (“Waugh”) is a significant issue. It is PIA’s position that the ownership interests claimed by Waugh, Austin and/or Jay Bishop are not supported by the corporation’s records. Any settlement premised upon ownership claims must be based on valid, accurate records. Any settlement within the broader settlement of the FCC issues, must not favor one group of PCSI stakeholders over another if it is to be universally accepted. PIA, if permitted to intervene in this stage of the proceeding has information that can help challenge or verify ownership claims that may be a foundation for any settlement. Its participation can give confidence to its members and similar stakeholders in PCSI that their interests are being properly represented and considered in the FCC settlement process.

7. The Designation Order raises questions about the participation of Waugh, Austin and Bishop in the operations of PCSI. Serious allegations have been raised concerning the fitness of these individuals to be Commission licensees. Therefore, any settlement that contemplates management/ownership changes must be done in such a way as to bring about true change. Any white knights that are proposed as new or additional officers or directors obviously must not be surrogates for the named parties to this proceeding. Austin should not be rewarded with any vote of confidence in his management of PCSI. PIA based upon information available to its members gained from their knowledge of PCSI will help in the due diligence with respect to the establishment of a management structure that will at least be capable of ensuring compliance with FCC Rules.

8. It appears that the resolution or compromise of issues personal to some of the parties to this proceeding is necessary to a universal settlement.<sup>2</sup> Since the resolution of these private/ personal claims may have an adverse impact on the private/personal financial interest of PIA members, fairness requires that they have a seat at the negotiations. Their participation enhances the likelihood of a settlement satisfactory to its members and similar stakeholders. Equally important participation by PIA will help ensure that any universal settlement advances the public interest in the FCC licensing process.

#### **EARLIER INTERVENTION NOT FEASIBLE**

9. The Designation Order in this proceeding was released in July of 2007. As indicated earlier, information from Mr. Austin as the sole officer and director of PCSI was not forthcoming. It was sometime before PIA members were fully aware of the potential consequences of the FCC proceeding.

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<sup>2</sup> These private legal matters should generally be left to the courts, not the FCC.

10. In any event, until the scheduled hearing was stayed by Order, FCC 09M-27, released March 11, 2009 and settlement negotiations were instituted, PIA's participation as a party was unnecessary. It was not until the negotiations looking to a comprehensive settlement apparently focused on the resolution of private, personal claims that PIA's interest was immediately and directly impacted. It then moved quickly. It retained counsel. It met in early May 2009 with the Enforcement Bureau to learn first hand the status of the negotiations and to advocate its concerns. After that meeting, PIA attempted to obtain a working arrangement with PCSI and Mr. Austin that would provide a real opportunity, not an illusory one, for PIA input into the settlement negotiations. This having failed, PIA instructed its attorney to prepare and file this motion to intervene for the limited purposes of the settlement negotiations.

11. PIA has moved prudently under the circumstances. The recently filed Status Report indicates that negotiations continue. PIA's participation within the next 60 days should not unreasonably delay the anticipated universal settlement.

#### CONCLUSION

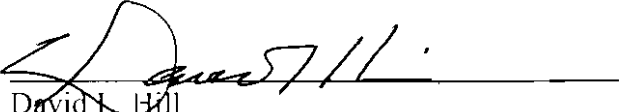
12. In an Order, FCC 08M-09, released February 19, 2008 by the then Presiding Judge a petition to intervene filed by a PCSI creditor was denied. PIA's situation is distinguishable. It is true that many of PIA's members are creditors of PCSI. Nonetheless, PIA and its members as shown above, if permitted to participate in the negotiation stage, will facilitate a settlement agreement that promotes the public interest and recognizes and protects their interests and the interests of other stakeholders in PCSI. It is not seeking party status in the revocation proceeding.

13. Thus for all of the foregoing reasons, PIA urges the Presiding Judge to exercise the discretion provided by §1.223(c) of the Rules and permit the limited intervention of PIA as outlined above.

Respectfully submitted,

**PREFERRED INVESTORS ASSOCIATION**

By:

A handwritten signature in black ink, appearing to read "David L. Hill", is written over a horizontal line.

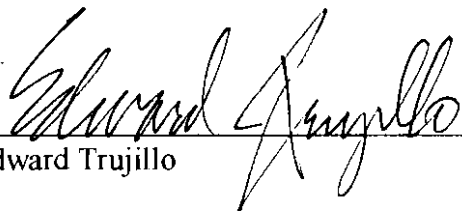
David L. Hill  
ITS ATTORNEY

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Dated: June 23, 2009

## **DECLARATION**

I, Edward Trujillo, authorized representative of the Preferred Investors Association, an unincorporated Association, hereby declare under penalty of perjury that the foregoing **MOTION TO INTERVENE** was prepared under my direction and that all factual statements and representations contained therein are true and correct to the best of my knowledge.

  
Edward Trujillo

Dated: June 18, 2009

## CERTIFICATE OF SERVICE

I, Gladys L. Nichols, do hereby certify that on this 23<sup>rd</sup> day of June 2009, the foregoing **MOTION TO INTERVENE** was served by first class mail, postage prepaid on the following person:

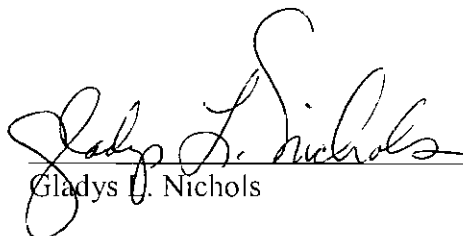
The Honorable Richard L. Sippel, Esq. \*  
Chief Administrative Law Judge \*\*  
Federal Communications Commission  
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\*\* Also By Hand Delivery